



# UNITED STATES PATENT AND TRADEMARK OFFICE

SW  
UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/611,054	07/06/2000	Tom Gray	481340010023	5057
7590	10/30/2003			EXAMINER KARMIS, STEFANOS
David B Cochran Jones Day Reavis & Pogue North Point 901 Lakeside Avenue Cleveland, OH 44114			ART UNIT 3624	PAPER NUMBER
DATE MAILED: 10/30/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

S N

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/611,054	GRAY ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Stefano Karmis	3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06 July 2000.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-36 is/are rejected.
- 7) Claim(s) 1-36 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

1. The following application has been reviewed. Original claims 1-36 are pending. The objections and rejections are as stated below:

*Claim Objections*

2. Claims 2-18 and 20-38 are objected to because of the following informalities: There is not consistent use of capitalization for the word "claim." Appropriate correction is required.

*Claim Rejections - 35 USC § 112*

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. The term " $r_c (1 - P_c / P_b)^{exp}$ " in claims 13 and 31 is a relative term which renders the claim indefinite. The term " $r_c (1 - P_c / P_b)^{exp}$ " is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. There is no explanation in the claims of the variables in the formula.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-12, 15-30 and 33-36 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Johnson et al. (hereinafter Johnson) U.S. Patent 6,005,925.

Regarding independent claims 1 and 19, Johnson discloses a method and system for service allocation among a plurality of entities requiring service allocation in a communications or computing environment in which a supply of services is initialized for one or more holding entities (column 6, lines 1-34); endowing one or more bidding entities with an adjustably fixed amount of utility and a requirement for an amount of said supply of services, wherein said fixed amount of utility is a measure representative of the possibility of failure due to lack of resources (column 6, lines 16-53 and column 8, line 53 thru column 9, line 24 and column 12, lines 4-38); negotiating said supply of services of said holding entities, with each bidding entity bidding a selected amount of its said fixed amount of utility and redistributing said supply of said holding entities among said bidding entities based on said negotiating (column 10, lines 1-46 and column 11, line 47 thru column 12, line 38).

Claims 2 and 20, the supply of services are comprised of a plurality of resources (column 14, line 63 thru column 15, line 22).

Claims 3 and 21, the plurality of resources are available at multiple service levels (column 4, lines 29-67 and column 8, lines 27-52).

Claims 4 and 22, initializing, endowing, negotiating and redistribution operate dynamically in response to a change in supply of services, fixed amount of utility or requirement for supply of services (column 6, lines 5-65).

Claims 5 and 23, the redistribution of the supply represents a guarantee of service (column 12, lines 4-38).

Claims 6 and 24, the resources are one or more physical devices (column 14, line 63 thru column 15, line 22).

Claims 7-8 and 25-26, the multiple service levels include varying levels of quality and capacity (column 13, line 57 thru column 14, line 31).

Claims 9 and 27, the multiple service levels are determined by resource sets (column 8, lines 27-52).

Claims 10 and 28, the redistribution is done deterministically (column 12, lines 4-38).

Claims 11 and 29, the redistribution is done statistically (column 11, lines 9-30).

Claims 12 and 30, the redistribution is based upon a proportion of supply held by the holding entity using a holding price (column 11, line 47 thru column 12, line 38).

Claims 15 and 33, each bidding entity is represented by an agent (column 6, lines 16-53).

Claims 16 and 34, each of the supply of services is represented by an agent (column 6, lines 16-53).

Claims 17 and 35, the holding entity is represented by an agent (column 6, lines 16-53).

Claims 18 and 36, the physical devices are a plurality of telephones, telephone interface circuits, trunk interface circuits, telephone lines and telephone switches for establishing or maintaining a voice or data communication (column 4, line 29 thru column 5, line 6).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 13-14 and 31-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al. (hereinafter Johnson) U.S. Patent 6,005,925.

Claims 13-14 and claims 31-32, Johnson teaches redistribution based upon a proportion of supply held by the holding entity using a holding price (column 11, line 47 thru column 12, line 38). Johnson fails to teach the manner in which the proportion is calculated. Official Notice is taken that proportion formulas are old and well known in the art. Therefore it would have been obvious to someone of ordinary skill in the art that a formula such as  $r_c (1 - P_c / P_b)^{exp}$  could

be applied to determine proportions because it provides a standardized and thus more efficient practice when determining proportions based on price and supply.

***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a) Reece et al., US Patent 5,915,214 Jun. 22, 1999. Mobile communications service provider selection system.
- b) Coyle, US Patent 6,269,157 Jul. 31, 2001. Bidding for telecommunications traffic with request for service.
- c) Kirkby et al., US Patent 6,498,786 Dec. 24, 2002. Method of allocating resources in a telecommunications network.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stefano Karmis whose telephone number is (703) 305-8130. The examiner can normally be reached on M-F: 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (703) 308-1065. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-1113.

Respectfully Submitted  
Stefano Karmis  
October 22, 2003



HANI M. KAZIMI  
PRIMARY EXAMINER